

(d) *Limitation on capital loss carryovers where there has been a consolidated return change of ownership*—(1) *General rule.* If a consolidated return change of ownership (as defined in paragraph (g) of § 1.1502-1) occurs during the taxable year or an earlier taxable year, the amount which may be included under paragraph (b) of this section in the consolidated net capital loss carryovers to the taxable year with respect to the aggregate of the net capital losses attributable to old members of the group (as defined in paragraph (g)(3) of § 1.1502-1) arising in taxable years (consolidated or separate) ending on the same day and before the taxable year in which the consolidated return change of ownership occurred shall not exceed the amount determined under subparagraph (2) of this paragraph.

(2) *Computation of limitation.* The amount referred to in subparagraph (1) of this paragraph shall be the excess of:

(i) The consolidated capital gain net income (net capital gain for taxable years beginning before January 1, 1977) (determined without regard to any net capital loss carryovers for the taxable year) recomputed by including only capital gains and losses and gains and losses to which section 1231 applies of the old members of the group, over

(ii) The aggregate net capital losses attributable to the old members of the group which may be carried to the taxable year arising in taxable years ending prior to the particular loss year or years.

(3) *Cross-reference.* See § 1.1502-22T(d) for the rule that applies the principles of this paragraph (d) in consolidated return years beginning on or after January 1, 1997, with respect to a consolidated return change of ownership occurring before January 1, 1997.

(e) *Effective date.* This section applies to any consolidated return years to which § 1.1502-21T(g) does not apply. See § 1.1502-21T(g) for effective dates of that section.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 8597, 60 FR 36679, July 18, 1995; T.D. 8677, 33323, June 27, 1996. Redesignated and amended by T.D. 8677, 61 FR 33333, June 27, 1996]

**§ 1.1502-23A Consolidated net section 1231 gain or loss generally applicable for consolidated return years beginning before January 1, 1997.**

(a) The consolidated section 1231 net gain or loss for the taxable year shall be determined by taking into account the aggregate of the gains and losses to which section 1231 applies of the members of the group for the consolidated return year. Section 1231 gains and losses on intercompany transactions shall be reflected as provided in § 1.1502-13. Section 1231 losses that are “built-in deductions” shall be subject to the limitations of §§ 1.1502-21A(c) and 1.1502-22A(c), as provided in § 1.1502-15A(a) (or § 1.1502-21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, and 1.1502-22T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as provided in 1.1502-15T(a) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999) or (1.1502-21(c) and 1.1502-22(c), as provided in 1.1502-15(a), as applicable), as appropriate).

(b) *Effective date.* This section applies to any consolidated return years to which § 1.1502-21(h) or 1.1502-21T(g) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable does not apply. See § 1.1502-21(h) or 1.1502-21T(g) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable for effective dates of these sections.

[T.D. 7246, 38 FR 763, Jan. 4, 1973, as amended by T.D. 8677, 33323, June 27, 1996. Redesignated and amended by T.D. 8677, 61 FR 33334, June 27, 1996; T.D. 8823, 64 FR 36099, July 2, 1999]

**§ 1.1502-41A Determination of consolidated net long-term capital gain and consolidated net short-term capital loss generally applicable for consolidated return years beginning before January 1, 1997.**

(a) *Consolidated net long-term capital gain.* The consolidated net long-term capital gain shall be determined by taking into account (1) those gains and losses to which § 1.1502-22A(a) applies which are treated as long term under section 1222, and (2) the consolidated section 1231 net gain (computed in accordance with § 1.1502-23A).

(b) *Consolidated net short-term capital loss.* The consolidated net short-term capital loss shall be determined by taking into account (1) those gains and losses to which § 1.1502-22A(a) applies which are treated as short term under section 1222, and (2) the consolidated net capital loss carryovers and carrybacks to the taxable year (as determined under § 1.1502-22A(b)).

(c) *Effective date.* This section applies to any consolidated return years to which § 1.1502-21(h) or 1.1502-21T(g) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable does not apply. See § 1.1502-21(h) or 1.1502-21T(g) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable for effective dates of these sections.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 8677, 61 FR 33323, June 27, 1996. Redesignated and amended by T.D. 8677, 61 FR 33334, June 27, 1996; T.D. 8823, 64 FR 36099, 36100, July 2, 1999]

**§ 1.1502-79A Separate return years generally applicable for consolidated return years beginning before January 1, 1997.**

(a) *Carryover and carryback of consolidated net operating losses to separate return years—(1) In general.* (i) If a consolidated net operating loss can be carried under the principles of section 172(b) and paragraph (b) of § 1.1502-21A to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member in the year in which such loss arose, then the portion of such consolidated net operating loss attributable to such corporation (as determined under subparagraph (3) of this paragraph) shall be apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) and shall be a net operating loss carryover or carryback to such separate return year; accordingly, such portion shall not be included in the consolidated net operating loss carryovers or carrybacks to the equivalent consolidated return year. Thus, for example, if a member filed a separate return for the third year preceding a consolidated return year in which a consolidated net

operating loss was sustained and if any portion of such loss is apportioned to such member for such separate return year, such portion may not be carried back by the group to its third year preceding such consolidated return year.

(ii) If a corporation ceases to be a member during a consolidated return year, any consolidated net operating loss carryover from a prior taxable year must first be carried to such consolidated return year, notwithstanding that all or a portion of the consolidated net operating loss giving rise to the carryover is attributable to the corporation which ceases to be a member. To the extent not absorbed in such consolidated return year, the portion of the consolidated net operating loss attributable to the corporation ceasing to be a member shall then be carried to such corporation's first separate return year.

(iii) For rules permitting the re-attribution of losses of a subsidiary to the common parent in the case of loss disallowance or basis reduction on the disposition or deconsolidation of stock of the subsidiary, see § 1.1502-20.

(2) *Nonapportionment to certain members not in existence.* Notwithstanding subparagraph (1) of this paragraph, the portion of a consolidated net operating loss attributable to a member shall not be apportioned to a prior separate return year for which such member was not in existence and shall be included in the consolidated net operating loss carrybacks to the equivalent consolidated return year of the group (or, if such equivalent year is a separate return year, then to such separate return year), provided that such member was a member of the group immediately after its organization.

(3) *Portion of consolidated net operating loss attributable to a member.* The portion of a consolidated net operating loss attributable to a member of a group is an amount equal to the consolidated net operating loss multiplied by a fraction, the numerator of which is the separate net operating loss of such corporation, and the denominator of which is the sum of the separate net operating losses of all members of the group in such year having such losses. For purposes of this subparagraph, the